

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 530 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PATEL GAURAV SAJIVKUMAR & CO. MAHAKALI TRADING CO.

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 530 of 2001
MR HR PRAJAPATI for Petitioner No. 1-4
MR DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1
MR PN BAVISHI for Respondent No. 2
DELETED for Respondent No. 3-4,6
MR AZIZ AN ALVI for Respondent No. 5
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/10/2002

ORAL JUDGEMENT

The revisioners were accused Nos. 2, 4, 5 and 6 in Criminal Case No. 83 of 1995 before learned JMFC, Botad. They were facing the trial for offences punishable under Sections 7(2) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. The allegation was that the sample purchased from them did not carry the batch number and code number on the packet. This was in violation of Rule 32(e) of the Prevention of Food Adulteration Rules.

2. The revisioners alongwith accused No.3 Nagardas G. Patel tendered an application before the learned Magistrate praying for their release/discharge on the ground that no offence is made out against them. Learned Magistrate rejected the said application and hence, this revision.

3. Learned Advocate Mr. Prajapati appearing for the revisioner submitted that if Rule 32(e) is perused, it provides that every package of food shall carry a label specifying the distinctive batch number or lot number or code number either in numerals or alphabet or in combination. He has drawn attention to the proviso to the said Rule which specifically states that in case of carbonated water containers and package of biscuits, confectionery and sweets containing more than 60g, but not more than 120g and food packages weighing not more than 560g, particulars under clauses (d) and (e) need not be specified. Mr. Prajapati submitted that the prosecution case is based on the same. Admittedly the packet of "sev" (snack) weighed 200 gm and therefore it would fall under the proviso. Mr. Prajapati submitted that the revisioner therefore cannot be prosecuted for the alleged non-observance of the rule. This has not been considered by the Court below and therefore he urged that this revision may be accepted.

4. The revision is opposed to by learned APP Mr. Desai.

5. As per the prosecution case, the complainant collected 3 sealed packets of maida sev each weighing 200 grams on 3.6.1994. The sample was sent for analysis to the Public Analyst and his report indicated that there were no extraneous matter and there were no colouring matter. The opinion of the Analyst was that there was contravention of provision of Rule 32(e) of PFA Rules, 1955 to the effect that the sample of maida sev is misbranded under Section 2(ix)K of the PFA Act, 1954. Section 2(ix)K defines "misbranded" as under:-

2(ix) "misbranded" - an article of food shall be deemed to be misbranded --

- (a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;
- (b) if it is falsely stated to be the product of any place or country;
- (c) if it is sold by a name which belongs to another article of food;
- (d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is;
- (e) if false claims are made for it upon the label or otherwise;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;
- (g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;
- (h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;

- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;
- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder;

Obviously, as per the prosecution case, non-mentioning of batch number and/or lot number would be covered by Clause (k) above i.e. not labelling in accordance with the requirement of the Act.

Rule 32(e) of the PFA regarding packaging and labelling of foods reads as under:-

32. Package of food to carry a label - Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label:-

- (a) the name, trade name or description of food contained in the package;
- (b) the names of ingredients used in the product in descending order of their composition by weight or volume as the case may be;
- (c) xxxxxx
- (d) xxxxxx
- (e) A distinctive batch number or lot number or code number, either in numerals or alphabets or in combination, the numerals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words Batch No., or Batch, or Lot No., or Lot or any distinguishing prefix:

However, the second further proviso to the rule provides that in case of food packaging weighing not more than 60 grams, the particulars under clauses (b) and (e) need not be specified.

6. Learned Advocate Mr. Prajapati has placed reliance on a decision of the Supreme Court in the case of Dwarka Nath and anr. Vs. Municipal Corporation of Delhi, reported in AIR 1971 (SC) 1844, wherein the vires of Rule 32(b) and (e) of the Prevention of Food Adulteration Act were considered by the apex Court. The apex Court in paragraph 21 of the said judgement observed as under:-

"21. There is no definition of the expression "batch number" or "Code number" either in the Act or the Rules. It is also admitted that even assuming that the batch or code number has to be given, there is no further obligation to specify in the label the date of packaging and manufacture of the article of food or the period within which the article of food has to be utilised, used or consumed. In the absence of any obligation to give the particulars mentioned by us above, the public or the purchaser will not be able to find out even the freshness of the contents of a container. Therefore, it follows that merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. In view of all these circumstances we are of the opinion that rule 32(e) is beyond the rule making power even under Sec. 23(1)(d) of the Act. The appellants could not be convicted for any violation of Clause (e) of R. 32 as the said provision, as pointed out above, is invalid."

The apex Court also observed in paragraph 23 that as Clause (e) of Rule 32 is held invalid the appellants cannot be convicted for non-compliance thereof.

In view of the above legal situation when the revisioners are the accused persons who are alleged to have violated the provisions of Rule 32(e) only, there is no point in proceeding with the trial against them. If ultimately they are to be acquitted on account of invalidity of Clause (e) of Rule 32 of the Act, as being beyond rule making authority of the Government as held by the apex Court in the above judgement, they cannot be insisted upon to face the trial. The revision therefore

deserves acceptance.

Revision application is accepted. Order dated 30.8.2001 impugned herein passed by the learned JMFC, Botad below Application Ex. 26 in Criminal Case No. 83 of 1995 is hereby set aside. The proceedings against the accused is dropped. Bail bonds of the revisioners shall stand cancelled. Rule made absolute.

(A.L.Dave, J.)

*/Mohandas